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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,064	10/02/2003	Thomas Ross	P08035US00/MP	7730
881	7590	02/08/2006	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			SWIGER III, JAMES L	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/676,064

Applicant(s)

ROSS, THOMAS

Examiner

James L. Swiger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 02 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/3/2003.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-5, 12-13, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (U.S. Patent No. 6,193,721). Michelson discloses a device having an anterior cervical plate (Fig. 1), having a lower surface (210) and an upper surface (39), at least one receiving area (Fig. 6, 20) that may be considered recessed and between two screw holes (Fig. 2, 6), and a locking element (Fig. 16) that may be positioned as such to secure the plate screws from an unlocked (holes completely uncovered) position, to a second, locked position (Fig. 40), that is capable of securing bone screws so they cannot back out of the plate once it has been secured to the patient. Michelson also discloses a device having at least one tool opening (24/27) for receiving a tool to turn the locking element and a positive positioning structure (220) to positively position the element in a second position. Also disclosed is an element capable of being a separate post, also capable of being located in both the through hole and opening (for example, Fig. 2, hole 6), also capable of securing plate and where the locking element can pivot relative thereto.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson '721 in view of Hayes (U.S. Patent No. 6,224,602). Michelson discloses the claimed invention except for a plate that has a raised boss pivotally mounted wherein the boss may extend the plate through the bottom. Hayes, however, discloses an locking element (60) capable of function as a boss and that may extend through the plate to the bottom (Col. 4, lines 15-17) that allows the locking element to be positioned and better secured, and provide interaction to unite the assembly and components that can be easily manipulated, or pivoted, during implantation surgery (Col. 4, lines 13-26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Michelson having at least a raised boss element that allows for both a pivoting, or secure fit when needed in view of Hayes to better position and secure the locking element during implantation of the device in surgery.

Claims 6-11 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson '721 in view of Evans et al.

Michelson discloses the claimed invention except for one of the receiving area and bottom of the locking element having at least one projection, the other of the receiving area and bottom of the locking element having at least one recess which is positioned to receive the projection and thereby snap the locking element onto the receiving area into the second position by using a ramp.

Evans et al. disclose a device having at least one projection (63) on the receiving area (61), that is capable of being moved via a second positioning over a ramp (94 and 95) that is recessed relative to the projections and are to be snapped into a recessed area (96). This ensures that the two objects are capable of alignment and are firmly secured in place (Col. 6, lines 63-58 and Col. 7, lines 1-13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Michelson having at least one projection and an opposing receiving area that uses a ramp in view of Evans et al. to more firmly secure and align the two parts of the device in use.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 2/6/2006

JLS

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER